

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

DEBORAH SHERMAN, )  
                        )  
Plaintiff,           )  
                        )  
v.                    )       No. 05-0505-CV-W-DW  
                        )  
JO ANNE B. BARNHART, )  
Commissioner of Social Security, )  
                        )  
Defendant.           )

**ORDER**

Before this court is Plaintiff's motion for attorneys fees pursuant to 28 U.S.C § 2412, or, in the alternative, 42 U.S.C. §406(b). (Doc. 17-18.) The Equal Access to Justice Act, 28 U.S.C. § 2412, permits a "prevailing party" to recover attorneys fees in a case brought against the United States. In this case, Plaintiff's motion to reverse and remand was granted and the ALJ was ordered to further consider Plaintiff's chronic fatigue syndrome. As a result of the remand order, Plaintiff is considered a prevailing party. Shalala v. Schaefer, 509 U.S. 292, 309 (1993). Plaintiff's counsel requests an award of \$4,132.50 for 29 hours of work before this court at an hourly rate of \$142.50. Defendant does not oppose an award of attorneys fees pursuant to § 2412.<sup>1</sup> Finding this amount to be reasonable, the Court grants the pending motion and awards Plaintiff \$4,132.50 in attorneys fees.

Plaintiff's motion is for an award under 28 U.S.C. § 2412 or 42 U.S.C. § 406(b). Defendant opposes an award of attorneys fees under 42 U.S.C. § 406(b) because Plaintiff does

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<sup>1</sup> 28 U.S.C. § 2412

not have evidence of past-due benefits. Because Plaintiff's § 2412 motion for attorneys fees will be granted, this Court need not address Plaintiff's alternative motion under to 42 U.S.C. § 406(b).

/s/ DEAN WHIPPLE

Dean Whipple

United States District Court

Date: June 5, 2006